

November 25, 2003

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Comments Regarding Health Care and  
Competition Law and Policy

Dear Mr. Clark:

The American Chiropractic Association (ACA) by letter of September 9, 2003 provided its comments pertaining to the operations of managed care organizations and insurance companies which adversely affect the health care marketplace. The ACA respectfully submits these additional comments on a matter of importance that also, we believe, has significant impact upon competition in the health care marketplace. Comments in this regard have been delayed due to the briefing schedule of an appeal currently brought by this Association and other Appellants before the U.S. Court of Appeals for the Fourth Circuit in *American Chiropractic Association, et al. v. Trigon Healthcare, et al.*

The ACA believes that the facts and circumstances described in the Trigon litigation deserve special and immediate attention of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice. The case details the manner in which a major health insurer in combination with competitive medical provider organizations have adversely affected the market for the treatment of back pain and other neuromusculoskeletal problems. We attached to these comments the brief of the Appellants and draw special attention to pages 7 through 27.

The case is a by-product and a continuation of a 100 year history of competitive hostility by one segment of the healing arts and sciences - medicine – against another segment – chiropractic. Early strategies first developed in the 1960s formulated an approach which was aimed at pursuing policies which would cause chiropractic to “wither on the vine”. These policies sought to block chiropractic in-roads in health insurance as well as educational institutions with special emphasis on prohibiting referral of patients to chiropractors. The United States Court of Appeals for the Seventh Circuit, in affirming a nationwide injunction against the American Medical Association, characterized the 23 year national campaign by medical organizations and their members to destroy chiropractic as “lengthy, systematic, successful and unlawful . . .” *Wilk, et al. v. AMA, et al.*, 895 F.2d 352, 371 (7<sup>th</sup> Cir. 1990).

The *Trigon* case details the operation of a managed care advisory panel composed of representatives of the Medical Society of Virginia, and numerous other Virginia state medical societies and medical schools, which acted to collusively assemble with Trigon scientifically distorted “back pain guidelines” for more than 90% of the medical physicians in Virginia. These distorted guidelines were purportedly based upon federal guidelines promulgated by the Agency for Health Care Policy and Research (AHCPR) of the U.S. Department of Health and Human Services. These guidelines, issued in 1994, were generally recognized by major newspapers throughout the country as a boon to chiropractors because of its endorsement of spinal manipulation as the “most effective and cost-effective treatment for acute low back pain” as referenced in the Annals of Internal Medicine, July 1998.

The *Trigon* case details how these pro-chiropractic guidelines were changed by Trigon and competitive medical associations. Because manipulation referral could only be to chiropractors and a handful of osteopaths, the conspirators had to change the AHCPR guidelines to avoid replacement of medical physician treatment by more efficient and effective chiropractic treatment and consequent transfer of Trigon insurance payments from medical doctors to chiropractors. Trigon and its co-conspirator medical doctors and medical associations rewrote the federal guidelines to create “provincial” guidelines that specifically omitted the recommendation of chiropractic manipulation, in an attempt to prevent more referrals to chiropractors.

According to Dr. Scott Haldeman, MD, DC, PhD, a recognized authority and a member of the AHCPR panel:

By omitting the AHCPR’s definitions of manipulation, Trigon and its Managed Care Advisory Panel materially altered the recommendations of the AHCPR. That alteration created a Trigon guideline that did not recommend the manipulation that is provided primarily by doctors of chiropractic as did the AHCPR Guidelines. A point that became evident from the AHCPR guidelines was that manipulation was the only treatment approach that required a medical physician, in most instances, to make a referral of a patient with uncomplicated low back pain. The inevitable, and obviously intended, consequence of Trigon’s and the Managed Care Advisory Panel’s alteration of the AHCPR guideline, is to deprive patients of the benefit from spinal manipulation as practiced by doctors of chiropractic, and to deprive doctors of chiropractic of the opportunity to treat those patients.

December 29, 2003

Page 3

In addition to the distribution of referral guidelines that distorted a federal guideline to discourage referrals of patients for chiropractic treatment, Trigon also collusively acted to: (1) pay chiropractors 40% less than medical doctors for performing the same services; (2) set payment for chiropractic services ignoring federal methodology that was applied for payment for most other services; (3) place a \$500.00 cap on payment for chiropractic treatments, which history has shown was not necessary.

All of the acts against the chiropractic profession profoundly distort the marketplace for health care services and seriously impact fair and free competition. The ACA submits that these actions against the chiropractic profession should shock the consciences of all federal and state antitrust enforcement officials as well as federal and state law makers. It is in the final analysis, the consuming patient population that suffers from the lack of competition in its choice of the "most effective and cost-effective treatment for low back pain."

Sincerely,

A handwritten signature in black ink, appearing to read "Donald J. Krippendorf". The signature is stylized with a large, sweeping "D" and a long, horizontal stroke extending to the right.

Donald J. Krippendorf, D.C.  
President

A handwritten signature in black ink, appearing to read "George B. McClelland". The signature is written in a cursive style with a large, ornate "G" and a long, horizontal stroke extending to the right.

George B. McClelland, D.C.  
Board Chairman